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BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE ON APPEAL TO THE BOARD OF APPEALS

In re Application of: Robert E. Norris	Date: December 17, 2004
Serial N°: 10/613,941	Group Art Unit: 3634
Filed: 07/07/2003	Examiner: Lev, Bruce Allen
For: Emergency Stairway Escape Apparatus For Wheelchairs	

CERTIFICATE OF SERVICE
I hereby certify that this correspondence is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231.

Terry Lakos — 12/20/04
Name: TERRY LAKOS — Date

BRIEF ON APPEAL

Hon. Commissioner of Patents and Trademarks
Washington, D.C. 20231

Dear Sir:

This is an appeal from the Final Rejection, dated 08/25/2004 for the above identified application.

REAL PARTY IN INTEREST

The party(ies) named in the caption of this brief are the real parties of interest in this appeal.

RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to appellant, appellant's legal representative, or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in this pending appeal.

STATUS OF CLAIMS

Currently pending are claims 1-3 which were all finally rejected, which is herein under appeal.

STATEMENT OF AMENDMENTS

There have been no supplemental amendments filed after final rejection.

SUMMARY OF CLAIMED SUBJECT MATTER

Referring to the specification pages 6, line 14 through page 9, line 7 and Figures 1 and 2, an emergency stairway escape apparatus for wheelchairs **10**, according to the preferred embodiment of the present invention is disclosed. The emergency stairway escape apparatus for wheelchairs **10** is installed in a typical stairway **15**, envisioned to be a closed stairwell, such as those found in a commercial multi-story building, encased by fire walls on all sides. However, it should be noted that the emergency stairway escape apparatus for wheelchairs **10** will work on any straight stairway, and as such, should not be interpreted as a limiting factor of the present invention. In this arrangement, an upper landing **20** is provided at the uppermost portion of the

conventional stairway **15**, and a lower landing **25** is provided at the lowermost portion of the typical stairway **15**. A series of treads **30** and risers **35** are provided in a quantity as necessary to interconnect the upper landing **20** and lower landing **25**. A ramp in stowed position **40** is provided along an outward wall **45** such that its width occupies the space from the base of the outward wall **45** to the area immediately under a handrail **50**. An edge of the ramp is secured to the outward wall **45** by a series of hinges **55** as shown. The ramp in stowed position **40** is held captive at the upper landing **20** by a quick-release latch **60**. Upon activation or release of the quick-release latch **60**, the ramp in stowed position **40** will fall in an arc defined by a first directional arrow **65**, and as anchored by the hinges **55**. At the completion of motion, the ramp in stowed position **40** becomes a ramp in deployed position **70**. The ramp in deployed position **70** occupies approximately one-half of the width of the treads **30** and the risers **35**, thus allowing use of the ramp in deployed position **70** on one-half of the conventional stairway **15**, while foot traffic can continue on the uncovered half of the conventional stairway **15**. A lip edge **75** is visible along the outward edge of the ramp in deployed position **70**, provided to prevent any object with wheels from rolling on or off any edge of the ramp in deployed position **70** except those in contact with either the upper landing **20** or the lower landing **25**. A motion retarding reel **80** is provided on an upper landing wall **85**. The functionality of the motion retarding reel **80** will be described in greater detail herein below.

Referring now to **FIG. 2**, an isometric view of the emergency stairway escape apparatus for wheelchairs **10** shown in an utilized state with a wheelchair **90** is

disclosed. The wheelchair **90** is located on the upper landing **20** preparing to descend the ramp in deployed position **70**. A high-strength cable **95**, of sufficient length to reach the lower landing **25** (as shown in **FIG. 1**) is deployed from the motion retarding reel **80** which is mounted on the upper landing wall **85** which is perpendicular to the travel path taken on the conventional stairway **15**. The captive hook **100** is hooked onto any structural member of the wheelchair **90**. The motion of the motion retarding reel **80** is such that the high-strength cable **95** will be outwardly discharged in a linear manner (substantially parallel to the direction of the handrail and the stairway) and is not dependent on the weight of the wheelchair **90** and its occupant. Thus, the wheelchair **90** can descend the ramp in a deployed position **70** to the lower landing **25** (as shown in **FIG. 1**) in a controlled manner as defined by a second directional arrow **105**. When reaching the lower landing **25** (as shown in **FIG. 1**), the captive hook **100** is unhooked and a self-retracting mechanism in the motion retarding reel **80** (such as a biased coil spring typical to and well known within the art) pulls the high-strength cable **95** and the captive hook **100** back up to the upper landing **20** for use by the next wheelchair **90**. It should be noted that while **FIG. 2** depicts a wheelchair **90**, any wheeled vehicle such as a cart, hand-truck, a stretcher or the like can be used with the emergency stairway escape apparatus for wheelchairs **10** with equal effectiveness. It is envisioned that every landing will possess the retarding reel **80** with cable **95** and hook **100**, and along every handrail within the building a deployable ramp.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The art the examiner has relied upon as the basis for various rejections include:

Claim 1 was rejected under 35 U.S.C. 112 as having inconsistency between the language in the preamble and certain portions in the body of the claim;

Claim 1 and 3 were rejected under 35 U.S.C. 103(a) as being unpatentable over Sternberg 6,161,396 in view of Buffaloe 5,769,593.

Claim 2 was rejected under 35 U.S.C. 103(a) as being unpatentable over Sternberg 6,161,396 in view of Buffaloe 5,769,593 further in view of Beeman 6,009,587

ARGUMENT

1. Rejections under 35 U.S.C. 112

The examiner indicated an inconsistency and/or confusion as to the claim language, specifically as to whether the applicant is claiming the apparatus or the combination of the apparatus and the building. Claim 1 was been amended to clarify that the applicant is claiming the apparatus, and that the wall of the stairway (as part of the building) is necessary for mounting the apparatus for use. However, the examiner still claimed uncertainty in the claimed subject matter.

Section 112 requires as a minimum, that the inventor "indicate" a use for a new composition. The test is what the application as a whole communicates to one skilled in the art. In some cases an applicant may, merely by naming his new instrument or material, have indicated what its use is. In re Nelson, 126 USPQ 242, 253 (C.C.P.A. 1960). In rejecting a claim under the second paragraph of 35 USC 112, it is incumbent on the examiner to establish that one of ordinary skill in the pertinent art, when reading the claims in light of the supporting specification, would not have been able to ascertain

with a reasonable degree of precision and particularity the particular area set out and circumscribed by the claims. Ex parte Wu, 10 USPQ 2d 2031, 2033 (B.P.A.I. 1989) It is not necessary that a claim recite each and every element needed for the practical utilization of the claimed subject matter. Stiftung v. Renishaw plc, 20 USPQ 2d 1094, 1101 (Fed. Cir. 1991)

It is here where the definiteness of the language employed must be analyzed—not in a vacuum, but always in light of the teachings of the prior art and of the particular application disclosure as it would be interpreted by one possessing the ordinary level of skill in the pertinent art. In re Angstadt, 190 USPQ 214, 217 (C.C.P.A. 1976).

Accordingly, it is felt that the clarifications of the previous amendment of claim 1 amply clarify what is being claimed, and the previous the reversal of the Examiner by the honorable Board of Appeals is respectfully solicited.

2. Rejection under 35 U.S.C. 103

In undertaking a determination of whether a reference, or a combination of references, renders a claim(s) obvious under 35 U.S.C. § 103(a), the examiner must show that the reference or combination of references teach or suggest every element of the claim(s) in question. MPEP § 706.02(j).

Claims 1 and 3 recite non-obvious elements that are patentably distinguishable over Sternberg and Buffaloe, including an emergency escape apparatus having:

- a ramp platform having a width of half of a stair tread and a length spanning from the upper landing to the lower landing of a stairway;

- a latch mounted to the stairway wall for impinging or releasing the platform;
- a plurality of hinges for affixing an edge of the platform to the wall; and
- a motion retarding reel mounted to an upper landing wall, the reel dischargeable in a linear manner and self-retracting, having a cable and a hook attachable to a wheelchair, said reel controlling ascent and descent along said ramp platform.

Sternberg is cited as disclosing every element except the latch, whereas Buffaloe is cited as disclosing the latch.

Sternberg fails to disclose a ramp platform spanning half the width of the stair tread, and a ramp platform that spans the distance from the upper landing to the lower landing of the stairway. Sterberg further fails to disclose a ramp platform having a plurality of hinges for mounting to an outward wall of the stairway. Sternberg discloses rollers (52) housed in notches (54), but the cited combination fails in operating as a hinge, as disclosed by Claim 1. The rollers and notches of Sternberg do not permit the upward pivoting of the ramp (18) toward the support surface (62), since the rollers are freely disassociated from the notches at the top side of the notches (see FIG. 2). Further, the rollers and notches of Sternberg are not capable of mounting to a wall for operation as a hinge for selectively impinging or deploying the platform as desired. Sternberg further fails to disclose a motion retarding reel mounted to an upper landing wall that is linearly dischargeable and self-retracting. Sternberg discloses an electrically controlled winch (32) (Column 4, Lines 2-7) that is used to *pull* the personal mobility vehicle *up* the ramp and into the "van" (14). The winch is not self-retracting (since it

requires electric power for operation).

Buffaloe fails to disclose a latch mounted to a stairway wall for impinging or deploying a ramp platform for emergency use in spanning a stairway.

The combination of Sternberg and Buffaloe fail to disclose every element of Claim 1 as required, thus Claim 1 is patentably distinguishable over Sternberg and Buffaloe. Claim 3 is patentably distinguishable over Sternberg and Buffaloe because of its dependency from Claim 1.

Claim 2 is likewise patentably distinguishable over Sternberg and Buffaloe because of its dependency from Claim 1. It stand to reason that, given this, even the combination of the Beeman reference does not add the necessary elements listed above.

Based upon the above arguments, it is felt that the differences between the present invention and all of these references are such that rejection based upon 35 U.S.C. § 103(a), in addition to any other art, relevant or not, is also inappropriate. However, by way of additional argument applicant wishes to point out that it is well established at law that for a proper *prima facie* rejection of a claimed invention based upon obviousness under 35 U.S.C. § 103(a), the cited references must teach every element of the claimed invention. Further, if a combination is cited in support of a rejection, there must be some affirmative teaching in the prior art to make the proposed combination. See Orthopedic Equipment Company, Inc. et al. v. United States, 217 USPQ 193, 199 (Fed. Cir. 1983), wherein the Federal Circuit decreed, "Monday Morning Quarter Backing is quite improper when resolving the question of obviousness." Also, when determining the scope of teaching of a prior art reference,

the Federal Circuit has declared:

> "[t]he mere fact that the prior art could be so modified should not have made the modification obvious unless the prior art suggested the desirability of the modification." (Emphasis added). In re Gordon, 221 USPQ 1125, 1127 (Fed. Cir. 1984).

There is no suggestion as to the desirability of any modification of the references to describe the present invention. An analysis of the disclosures within the cited references fails to cite every element of the claimed invention. When the prior art references require a selective combination to render obvious a subsequent claimed invention, there must be some reason for the selected combination other than the hindsight obtained from the claimed invention itself. Interconnect Planning Corp v. Feil, 774 F.2d 1132, 227 USPQ 543 (CAFC 1985). There is nothing in the prior art or the Examiners arguments that would suggest the desirability or obviousness of making a support apparatus for rollout awnings according to the present invention. Uniroyal, Inc. v. Rudkki-Wiley Corp., 837 F.2d 1044, 5 USPQ 2d 1432 (CAFC 1988). The Examiner seems to suggest that it would be obvious for one of ordinary skill to attempt to produce the currently disclosed invention. However, there must be a reason or suggestion in the art for selecting the design, other than the knowledge learned from the present disclosure. In re Dow Chemical Co., 837 F.2d 469, 5 USPQ.2d 1529 (CAFC 1988); see also In re O'Farrell, 853 F.2d 894, 7 USPQ 2d 1673 (CAFC 1988).

To summarize, it appears that only in hindsight does it appear obvious to one of ordinary skill in the pertinent art to combine the present claimed and disclosed combination of elements. To reject the present application as a combination of old

elements leads to an improper analysis of the claimed invention by its parts, and instead of by its whole as required by statute. Custom Accessories Inc. v. Jeffery-Allan Industries, Inc., 807 F.2d 955, 1 USPQ 2d 1197 (CAFC 1986); In re Wright, 848 F.2d 1216, 6 USPQ 2d 1959 (CAFC 1988).

Accordingly, the reversal of the Examiner by the honorable Board of Appeals is respectfully solicited.

Respectfully submitted,

John D. Gugliotta, P.E., Esq.
Registration No. 36,538
Attorney for Appellant

Patent, Copyright & Trademark Law Group,LLC
USPTO Customer No. 33055
202 Delaware Building
137 South Main Street
Akron, OH 44308

(330) 253-5678
Facsimile (330) 253-6658

CLAIMS APPENDIX

The claims on appeal are as follows:

1. (Once Amended) An emergency stairway escape apparatus ~~that permits~~ adapted to permit people in wheelchairs to egress a multistory building using a ~~conventional~~ stairway comprising:

a ramp platform of sufficient width to cover at least half of each stair tread and of sufficient length to span from an upper landing to a lower landing of said stairway;

a latch mounted to an outward wall of the stairway for impinging said ramp platform in a stowed position and releasing said ramp platform to a deployed position;

a plurality of hinges for affixing an edge of said ramp platform to ~~said~~ the outward wall; and

a motion retarding reel mounted to an upper landing wall, said reel comprising high strength cable outwardly dischargeable in a linear manner and self-retracting, said cable comprising a hook attachable to a wheelchair, said reel controlling ascent and descent along said ramp platform.

2. (Original) The apparatus of Claim 1, wherein said ramp platform further comprises a lip edge to prevent an object with wheels from departing said ramp platform and causing damage and injury.

3. (Original) The apparatus of Claim 1, wherein said reel outwardly discharges said cable independent of the weight of said wheelchair and occupant.

EVIDENCE APPENDIX

None

RELATED PROCEEDINGS APPENDING

None